Branch Motor Express Company *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters' Steel Haulers Local Union No. 800. Case 6-CA-13102

February 10, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 19, 1981, Administrative Law Judge Thomas R. Wilks issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found that Respondent violated Section 8(a)(5) and (1) of the Act by dealing directly with employees and unilaterally implementing changed terms and conditions of employment with respect to the lease of trailers in contravention of the terms of the National Master Freight Agreement (NMFA). We find merit in Respondent's exceptions to these findings.

Respondent is a common carrier engaged, *inter alia*, in the interstate hauling of iron and steel, and is bound by the terms of the NMFA and its supplements. It has been Respondent's practice to employ owner-operators[2] who are covered by the NMFA. The NMFA provides that owner-operators are to be paid rental at the rate of 33 percent of gross revenue for use of a tractor and 13 percent of gross revenue for use of a trailer.

From mid-1979 through September 1979 Respondent experienced economic difficulties which reached the point where it was costing Respondent $1.016 for every $1 that it earned. After a series of managerial discussions Respondent concluded that the 13-percent rental paid on trailer leases under the NMFA was excessive and that it would be more economically advantageous to utilize its own trailers. Accordingly, on October 9, Respondent's president sent letters to all its owner-operators notifying them that beginning within 90 days Respondent would put into service its own trailers and would no longer lease trailers owned by owner-operators. The phase-in of Respondent-owned trailers was expected to last approximately 7 months. The letter also indicated Respondent's willingness to meet with the owner-operators' designated representative to review the situation.

Shortly thereafter, Local 800 Business Agent Correlli acquired a copy of the October 9 letter and telephoned the director of Respondent's special commodities division, Gannon. Correlli threatened to file a grievance over the cancellation of the leases. Gannon stated that Correlli could do so and offered to meet with him and Respondent's director of labor relations, Allen. Despite several attempts to set up meetings with Correlli, no meetings were held.

Meanwhile, Allen was contacted by International Union Agent McMasters concerning the October 9 letter. At McMasters' request, Allen held several meetings in October and November 1979 with McMasters and representatives of several locals, most of which were within the area covered by the Central States Conference. As a result of these meetings, and at the suggestion of the union representatives, Respondent agreed not to terminate the leasing of the owner-operators' trailers but rather to enter into new leases containing a reduced rental rate of 10 percent.

On December 12, 1979, Allen wrote to all owner-operators informing them of the agreement. Upon learning of the letter, Correlli phoned Gannon to ascertain who had negotiated on behalf of the Union. Despite Gannon's efforts to arrange a meeting between Correlli and Allen, no meeting occurred.

In January 1980, the 13-percent leases were canceled and all Respondent's owner-operators were given the option of signing 10-percent leases or pulling a trailer provided by Respondent. All of the owner-operators signed the new leases. No

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In the section of his Decision entitled "Events Leading to the Reduction in Trailer Rental," the Administrative Law Judge stated that Local 429 of Reading, Pennsylvania, is located in the Central States Conference area rather than in the Eastern Conference area. This inadvertent error is insufficient to affect our decision.

[2] Owner-operators lease equipment to Respondent under the terms of the NMFA and operate that equipment. In addition to the equipment rentals, they receive as compensation for their driving services 26 percent of gross revenue as wages, 3 percent as compensation for various types of leave, and fringe benefits as specified in the NMFA. In late 1979, approximately 44 owner-operators employed at Respondent's Butler and Pittsburgh, Pennsylvania, terminals were represented by Local 800 and covered by the Eastern Conference Area Iron & Steel Rider to the NMFA. The majority of Respondent's owner-operators were represented by locals within the Central States Conference of the Teamsters and were employed at terminals covered by the Central States Conference Iron & Steel Rider to the NMFA.

driver was terminated and there was no work interruption.

In concluding that Respondent violated the Act, the Administrative Law Judge found that the designated bargaining agent was neither the Local Union nor the International. Rather, he found that the affiliated Teamsters local unions jointly constituted the bargaining agent and that the locals, in practice, authorized the Teamsters National Freight Industry Negotiating Committee (the Committee) to act as their agent in negotiations. He further found that McMasters and the representatives of several individual locals who met with Respondent had neither real nor apparent authority to negotiate modifications of the NMFA or of the Eastern Conference Area Iron & Steel Rider. He also found no evidence that the bargaining agent had acquiesced in the individual negotiations.

We conclude that the General Counsel has not established by a preponderance of the evidence that Respondent violated the Act as alleged in the complaint. The complaint alleged, and the Administrative Law Judge found, that the "affiliated local unions" of the Teamsters constituted the designated collective-bargaining representative. In order to make out a *prima facie* showing that Respondent violated Section 8(a)(5) by its change in trailer leases, the General Counsel was required to show that Respondent failed to bargain and reach agreement *with the designated bargaining representative* before implementing changes in the terms and conditions of the contract. Similarly, an element of direct dealing with employees is the lack of consent *by the designated bargaining representative* to the contacts made with employees—in this case, the signing of new leases containing terms which differ from those required by the NMFA. We agree with the Administrative Law Judge's finding that the Committee, rather than the individual local unions or the International, was the agent for the purpose of negotiations, and that McMasters and the representatives of the several individual locals had no authority to negotiate modifications of the NMFA or of the Eastern Conference Area Iron & Steel Rider. However, the General Counsel introduced no evidence establishing that Respondent did not bargain with the Committee over the proposed lease changes or that it did not obtain the Committee's approval of the new leases.[3] As the General Counsel has not shown that Respondent failed to bargain with the designated bargaining agent—the affiliated Teamsters local unions jointly and/or their designated agent for purposes of bargaining, the Committee—before instituting the changes, we find that he has not met his burden of proof with respect to the violations alleged. Accordingly, we shall dismiss the complaint.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that the complaint herein be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

THOMAS R. WILKS, Administrative Law Judge: This case was heard at Pittsburgh, Pennsylvania, on October 1, 1980, pursuant to an unfair labor practice charge filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters' Steel Haulers Local Union No. 800 (herein called Local 800) on February 1, 1980, and a complaint issued by the Regional Director for Region 6 on April 28, 1980. The complaint alleges, in essence, that Branch Motor Express Company (herein called the Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, by engaging in certain conduct which constituted direct dealing with employees in evasion of their exclusive bargaining agent, by unilaterally without consulting or bargaining with the exclusive bargaining agent implementing changes in terms and conditions of employment, and by terminating employees or refusing to assign work to employees who failed to conform to those changed employment conditions. More particularly, the Respondent is alleged to have changed the conditions of employment of its employee owner-operators with respect to equipment owned by its owner-operators and leased to the Respondent.

The Respondent's answer denies the commission of any unfair labor practices and, as amended at the hearing, avers that the Board should defer the issues herein to the grievance procedure set forth in a collective-bargaining agreement to which it and Local 800 are a party. All parties were afforded full opportunity to participate, to present evidence, to argue orally, and to file briefs.

Upon the entire record in this case, including my observation of the demeanor of witnesses, and in consideration of the briefs, I make the following:[1]

FINDINGS OF FACT

I. BUSINESS OF THE RESPONDENT

The Respondent, a corporation with facilities located in various States throughout the United States, including facilities located in Pittsburgh and Butler, Pennsylvania,

[3] We note that, in its answer to the complaint, Respondent specifically alleged that it first discussed the proposed changes regarding leases with the Committee and, with the concurrence of the Committee, presented proposals to the employees.

[1] Hearings involving similar alleged violations were conducted on September 29 and 30, 1980, involving Jones Motor Co., Inc., Cases 6-CA-13101 and 6-CA-13343, and Spector Freight System Viking Division, Case 6-CA-13105.

has been engaged as a common carrier in the intrastate and interstate transportation of freight and steel commodities. During the 12- month period ending March 31, 1980, the Respondent derived from these operations gross revenues in excess of $50,000 for the transportation of freight and steel commodities from within Pennsylvania directly to points outside.

It is admitted and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

It is admitted and I find that Local 800 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

The Respondent is a common carrier engaged *inter alia* in the interstate hauling of iron and steel, and under its steel and Special Commodities Division operates terminals located *inter alia* in Pittsburgh and Butler, Pennsylvania, where there are employed owner-operators; i.e., persons who drive either self-owned equipment or equipment supplied from a source other than the employer. The status of owner operators as employees within the meaning of the Act is conceded and is not an issue herein.

Local 800 commenced its existence in 1971 for the purpose of representing owner-operators, company drivers and fleet drivers engaged in the transporting of iron, steel, and special commodities in the western Pennsylvania area. Owner-operators and fleet drivers who are members of Local 800 are employed at the Respondent's Pittsburgh and Butler, Pennsylvania, terminals.

As a longstanding practice in the trucking industry dating back to the mid-1960's multiemployer and multiunion bargaining has resulted in the negotiation of the National Master Freight Agreement (herein called the NMFA), and approximately 32 area supplements including the Eastern Conference Area Iron & Steel Rider. The most recent NMFA is effective from April 1, 1979 to March 31, 1982. Trucking Management, Inc., is an organization composed of a number of employers, and exists for the purpose, *inter alia*, of representing its employer-members in negotiating and administering, together with other employer-associations, the NMFA and various supplements thereto, with the Teamsters National Freight Industry Negotiating Committee (herein called the National Committee) representing various labor organizations including Local 800 under what has been testified to as a "power of attorney." The Respondent, although not a member of Trucking Management, Inc., has authorized it to represent it in collective bargaining with the National Committee. The Respondent is bound by the resulting NMFA and its supplement, including the Eastern Conference Area Iron & Steel Rider.

The appropriate unit herein is that group of employees covered in the multiemployer bargaining unit as set forth in articles 2 and 3 of the NMFA employed by the employer members of the multiemployer bargaining groups as well as those employees of the Respondent. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is divided into four geographical jurisdictions including, *inter alia*, the Eastern Conference of Teamsters which in turn is composed of local unions in the eastern United States. The Eastern Conference of Teamsters is subdivided into groups of various local unions in certain geographical areas including a group known as Joint Council No. 40. The National Committee consists of representatives appointed by the International Union's general president upon recommendation of the area conference director. With respect to the negotiation of the NMFA and its supplements the National Committee divides itself into subcommittees which then engage in simultaneous negotiations. The National Committee's principal subcommittee negotiates articles 1-39 of the NMFA. The articles of the NMFA commencing with article 40 are negotiated by area subcommittees. Those final articles, i.e., herein the Eastern Conference Area Iron & Steel Rider, is limited in application to geographic region, and the nature of operations covered (iron and steel products). The Iron and Steel Rider is supplemental to the National Agreement. The parties to the NMFA are the various employer associations and members or employers bound thereunder including the Respondent, the Local Unions, including Local 800, and the National Committee. As alleged in the complaint and as admitted by the Respondent's answer, at all times material herein the local unions affiliated with the International Union, including Local 800, have been and are now together the exclusive collective-bargaining representative of the employees in the multiemployer unit described above, and have been recognized as such by the Respondent pursuant to the aforedescribed collective-bargaining agreements.[2]

The NMFA and Eastern Conference Area Iron & Steel Rider are explicitly self-described in article 1 and elsewhere as products of multiemployer/multiunion bargaining. Article 2, section 4, stresses a single bargaining unit and a single contract. Article 6, section 2, prohibits an employer from entering "into any agreement or contract with its employees individually or collectively, which in any way conflicts with the terms and provisions of this Agreement." Article 31 again refers to the multiemployer, multiunion nature of the bargaining unit and obliges the parties "to participate in joint negotiations of any modification or renewal" of the NMFA and supplements.

Article 2, section 5, of the NMFA refers to a continuation of riders providing for better wages, hours, and working conditions negotiated by the local unions and affected employers. "Improvement" riders are required to be submitted to a Conference Joint Area Committee for approval. It states:

> No new Riders to this agreement shall be negotiated unless approved by the Conference Joint Area

[2] For a description and discussion of the background concerning the multiemployer/multiunion bargaining of the NMFA see *Brotherhood of Teamsters Local 70 (Granny Goose Foods)*, 195 NLRB 454 (1972); *Brotherhood of Teamsters and Auto Truck Drivers Local 70 (Granny Goose Foods)*, 214 NLRB 902 (1974); *Davey v. Fitzsimmons*, 413 F.Supp. 670 (D.C.D.C. 1976).

> Committee, if confined to that Conference Area, or by the National Grievance Committee if applicable to more than one Conference Area.

It further treats preexisting riders that fail to meet the standards set forth in the NMFA and supplements and provides for negotiation of those riders and approval of them by contractual procedures.

Article 6, section 1, "Maintenance of Standards" provides for the continuance by the employers of all conditions of employment relating to wages, hours, etc., at not less than the same standards in effect at the time of the signing of the agreement. It provides, however, that the terms of this section do not apply to an employer who has applied the terms of the agreement through inadvertence or error, and states that an employer who has done so may seek relief in writing from the appropriate Conference Joint Area Committee. It further provides that "any disagreement between the Local Union and the Employer with respect to this matter shall be subject to the grievance procedure."

Article 61, section 7, "Competitive Review Board," states:

> The Employer Negotiating Committee, together with the Union Negotiating Committee shall designate a "Joint Competitive Review Committee" which shall meet at the request of either side for the purpose of reviewing and, if necessary adjusting by mutual agreement wage rates or practices which, because of competitive circumstances, have resulted or may result in a diversion of business and a consequent loss of jobs to other means of transportation.
>
> Nothing herein contained shall be construed to permit the Committee to review or adjust tariffs or other charges made by Employers hereto or to adjust or to interfere with competitive practices among Employers who are parties hereto or others.

Article 22 relates to the terms and conditions of employment of owner-operators. Nothing in the NMFA or supplements requires an employer to lease equipment from a driver. However, article 22, section 4, provides that "the performance of unit work by owner-operators should be governed by the provisions of this Agreement and supplements relating to owner operators." It makes explicit references to leases of equipment by the owner-operator and requires in section 12 that a copy thereof be filed with the "Joint Area Committees" and that the minimum rates are to be set forth in the area supplement. Section 18 states:

> It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of the Agreement, wherein the provisions as to compensation for services of and for use of equipment owned by owner-operator shall be lessened, nor shall any owner-operator's lease be canceled for the purpose of depriving employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this Section shall be subject to the discharge and grievance provisions of the Area Supplement.

Article 55, contained in the Eastern Conference Area Iron & Steel Rider, deals further with the terms and conditions of employment of the owner-operators. Reference therein is made to the lease of equipment from the owner operator to the employer, and to a minimum lease duration of 30 days. Section 12 requires the filing of copies of such leases with the "Joint State Committees," and that leases must be in accord "with the minimum rates and conditions herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this agreement." (The minimum rates for rental are set forth in art. 61.) Section 15 provides for the nullification of contrary agreements extant at the agreement's execution. Section 18 states:

> It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of the Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-operator shall be lessened, nor shall any owner-operator's lease be canceled for the purpose of depriving employees of employment and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to Article 44, except for clear violation by the owner-operator of the lease Agreement.[3]

Section 20 provides:

> All leases, agreements or arrangements between carriers and owner-operators shall contain the following statement:
>
> The equipment which is the subject of this lease shall be driven by an employee of the lessee at all times that it is in the service of the lessee. If the lessor is hired as an employee to drive such equipment, he shall receive as rental compensation for the use of such equipment no less than the minimum rental rates, allowances and conditions (or the equivalent thereof as approved by the Joint Area Committee) established by the current Eastern Conference Area Iron and Steel Rider for this type of equipment and, in addition thereto, the full wage rate and supplementary allowances for drivers (or the equivalent thereof as approved by the Joint Area Committee).
>
> The lessee expressly reserves the right to control the manner, means, and details of and by which the driver of such leased equipment performs his services, as well as the ends to be accomplished.
>
> To the extent that any provisions of this lease may conflict with the provisions of the Eastern Conference Area Iron and Steel Rider as it applies to equipment driven by the owner, such provision of this lease shall be null and void and the provisions of such Rider shall prevail.

[3] Art. 44 refers to the grievance procedure.

> All Employers, by virtue of signing this Agreement, do hereby agree to sign the uniform lease approved by the Union. It is understood that this Agreement supercedes all other leases and agreements where a lease has not been approved by the Committee.

A comprehensive grievance procedure for the resolution of all grievances or questions of interpretation arising under the NMFA supplements is set forth in articles 8, 44, and 45 which provide for ascending stages of joint employer-union bipartite committees consisting of equal numbers of representatives of both parties; i.e., Joint Local Committee; Joint Area Committee; the Eastern Conference Joint Area Committee; and finally the National Grievance Committee. A decision at any step of these proceedings is final and binding. The grievance proceeds to the next or higher level when the committee then hearing the matter fails to come to an agreement; i.e., when they become deadlocked. Article 45, section 1, mandates that "no strike, lockout, tie up or legal proceedings" may be resorted to by the parties without first exhausting the contractual grievance procedures. Article 8 provides the National Grievance Committee with the authority to refer to "arbitration," pursuant to majority vote, cases involving discharges or suspensions which are deadlocked. Other disputes are decided upon majority vote of the National Committee and, if deadlocked, the parties are then free to resort to economic or other self-help.

B. *Events Leading to the Reduction in Trailer Rental*

A large number of the Respondent's employees are owner-operators who lease equipment to the Respondent. A substantial portion of their income is derived from the rental compensation. Those leases in effect prior to January 20, 1980, set forth a combined tractor-trailer rental payment to the owner-operator of 46 percent of gross revenue, of which 33 percent is for the use of the tractor and 13 percent for use of a trailer. The leases provided for termination upon timely notice by Respondent or the driver.

From mid-1979 through September 1979 the Respondent had experienced economic difficulties which reached the point where $1.016 was spent for every $1 earned. The Respondent concluded after a series of managerial deliberations that it would be more economically advantageous to utilize its own trailers than to lease trailers owned by its owner-operator employees. Approximately 44 owner-operators employed by Respondent in western Pennsylvania at the Pittsburgh and Butler terminals were represented by Local 800 in the Eastern Conference of Teamsters. Of a total number of 312 owner-operators employed by the Respondent in late 1979 approximately two-thirds to three-fourths were employed at terminals within the jurisdiction covered by the Central Conference Area Iron & Steel Rider.

On October 9, 1979, by letter signed by the Respondent's president, Marvin Burten, the owner-operators were told of the Respondent's economic problems and that after undertaking certain studies that the Respondent concluded that the trailer rentals in its equipment leases were excessive and that it could buy, on a lease-purchase basis, trailers at a lower rate. The owner-operator was also notified that within 90 days the Respondent would commence utilizing its own trailers and would no longer lease the trailers of its owner-operators. A phase-in period of 7 months was set during which a total changeover would be effectuated. The letter concluded:

> All your representatives are being advised of this action by Branch Motor Express and the management of Branch will, of course, meet with your designated representatives to review this situation should you desire.

The business representative of Local 800, Charles Correlli, testified that he came within possession of the October 9 letter from a member shortly after it had been sent. Correlli testified that he took no action with respect to that letter because he considered it to constitute a "feeler" addressed to the owner-operators. His testimony as to conversations with Respondent's agents was vague and uncertain. In this regard I credit the more certain and detailed testimony of Hugh Gannon, at that time the director of Respondent's special commodities division. Gannon testified that, within a week after the October 9 letter was sent, Correlli telephoned him and asked "what was going on." Gannon responded that the letter was self-explanatory and that it set forth action which the Respondent considered necessary. Correlli threatened to file a grievance. Gannon asserted that if that is what Correlli felt he ought to do he should go ahead and do it but that the Respondent felt that it was within its right to obtain the use of company trailers. Gannon referred Correlli to the letter's closing paragraph and offered to meet with Correlli, and with the Respondent's director of labor relations, Arthur Allen. Within a week or 10 days Correlli again telephoned Gannon and again asked what the Respondent intended to do. Gannon again had a meeting with Allen. Correlli told him that he had been unable to contact Allen. Gannon then stated that he would contact Allen. Correlli responded that he would probably file a grievance and unfair labor practice charges. A meeting that was arranged between Correlli and Allen for November 8 was subsequently canceled by Correlli.

In the meantime Allen had been personally contacted by International Union Agent Roland McMasters after the October 9 letter was sent.[4] Allen in his testimony cryptically identified McMasters as a "General Organizer and Director of Iron and Steel for the Teamsters," with whom he has had dealings since 1965 "relative to [Respondents] Iron and Steel Division." McMasters in his testimony identified his job as "generally coordinating and assisting local unions." McMasters' office is located in Washington, D.C., and he functions "throughout the whole system." However, he testified that his job does

[4] Allen testified that he had sent copies of the October 9 letter to all local unions. Correlli testified that he received no copies directly from the Respondent. The International trustee for Local 800, Robert Dietrich, and Local 800 President Robert Todd testified that they had no awareness of the Respondent's plans prior to January 1980. I credit Correlli, Todd, and Dietrich.

not involve the direction of functions of the Eastern Conference of Teamsters, but that when requested he will give his "assistance." He testified that he has no authority to commit Local 800 or "anybody" to any agreement or arrangement with respect to the NMFA. He explained that each local is possessed of certain rights and that a coordinated effort is customarily made by all locals, and that all contractual changes are processed through joint committee but that approval of the local unions is necessary for contractual modification. McMasters participated in the original negotiation of freight agreements under then International Union President Beck, and he has been involved in Central States Conference negotiations subordinate to the Central States negotiating team chairman, Cassidy. McMasters has been involved in organizing efforts in the Eastern Conference but he had no involvement in any collective-bargaining negotiations in the Eastern Conference according to Todd's credible and uncontradicted testimony.

McMasters testified that he became aware of Respondent's October 9 letter when it was brought to his attention in the fall of 1979 by several local unions in the Central States Conference which he characterized as "my area that I work heavy in." McMasters testified that drivers in that conference expressed concern over the prospective loss of income that would result from the cancellation of equipment leases by the Respondent, and that they would be willing to accept a lease providing for less than the 13-percent trailer rental set forth in the collective-bargaining agreement. Thereafter meetings were arranged and held in October and November 1979 at several locations in the Central Conference Area with McMasters and representatives of Local 92 of Cleveland, Local 580 of Lansing, Michigan, and Local 429 of Reading, Pennsylvania, with representatives of Respondent including, *inter alia*, Allen. As a result of these meetings, and the suggestion of union representatives, the Respondent agreed to suspend its decision to terminate the leasing of driver-owned trailers but agreed instead to enter into new leases containing a reduced trailer rental of 10 percent. The agreement was not put into writing. The agreement on the 10-percent figure was reached on December 19, 1979.

Allen testified that with respect to local Unions which had not attended the meetings with McMasters: ". . . if the local union itself demonstrated little or no interest in it, we saw no reason to drag them into anything, they were aware of what we were doing." No evidence was adduced as to the awareness of nonattending locals regarding the alternatives proposed at the meetings.

On December 27, 1979, Allen forwarded a letter to all owner-operators employed by the Respondent wherein he recited that since the October 9 letter he had been contacted by "representatives of the International Brotherhood of Teamsters and have negotiated to a conclusion a revision in [Respondent's] policy stated [in the October 9 letter]." The letter stated that new leases would be issued and that the owner-operator would be contacted by the Respondent's regional managers regarding the leases "and the changes negotiated with the representatives of the International Brotherhood of Teamsters."

Allen testified without contradiction and credibly that, during the Eastern Conference of Teamsters grievance meetings in January 1980, Eastern Conference Union Representative Joe Mazza informed him that Correlli wished to meet with him later in that week; that Allen agreed; but that Correlli never subsequently contacted Allen.

Correlli testified that in response to the December 27 letter he telephoned Gannon to ascertain the identity of the union representative referred to therein. As to the balance of the conversation I again credit the more certain and detailed testimony of Gannon. Gannon testified that he asked Correlli if he had been contacted by McMasters. Upon a negative response Gannon then said he would try to arrange a meeting in January at the Eastern Conference grievance meetings and Correlli agreed. Gannon later telephoned Correlli and advised him that Allen was agreeable to meet with him and that he would be available at a certain hotel. Correlli indicated that he would meet with Allen. No such meeting occurred. In his vague and indecisive testimony Correlli conceded that he may have spoken with Gannon about the arrangement of such meeting, that he did ask Mazza to use his "good offices" to arrange a meeting, but that he believed that he may have met with Allen. I credit Allen and Gannon.

As to whether McMasters informed Todd of the negotiations in the Central Conference I credit the far more certain testimony of Todd that, although he spoke with McMasters about certain problems, no reference was made to the matter of the Respondent's negotiations with respect to a reduced trailer rental.

On January 10, Gannon sent a letter to the Respondent's owner-operators informing them of the cancellation of their equipment leases and that they would be notified of "details concerning your new lease." In mid-January the equipment leases were canceled. The owner-operators were given an option to accept a 10-percent lease or to haul a trailer provided by the Respondent to be hauled by a driver-owned tractor. All drivers opted to execute the new lease. No driver was terminated. There was no interruption in the work assignment of any driver.

The drivers informed Correlli of the Respondent's actions and Correlli then advised Todd and Dietrich. On February 1, the instant charge was filed by Todd who also on that date by letter to the Respondent protested the Respondent's attempt to effectuate an equipment lease the terms of which were contrary to the NMFA.

Shortly after the implementation of the new equipment leases grievances were filed by two owner-operators asserting a breach of the collective-bargaining agreement. At the first step of the grievance hearings before the Western Pennsylvania Area Teamsters and Employers Joint Area Committee, the Respondent asserted that the grievances were improperly raised to that committee inasmuch as the Union did not comply with article 45, section 1, of the NMFA in that the instant charges were pending before the Board prior to the exhaustion of the grievance procedure. That committee became deadlocked over the Respondent's point of order. On appeal,

the Eastern Conference Joint Area Committee referred the matter back to the Western Pennsylvania Committee with instructions to the Union to comply with article 45, section 1, of the NMFA and supplement. On remand the Western Pennsylvania Committee deadlocked over the issue of compliance with article 45, section 1, and the matter was again sent to the Eastern Conference Committee for review where it has remained without decision.

C. *Analysis*

1. Issues restated

The General Counsel contends that the Respondent violated Section 8(a)(5) and (1) of the Act by bypassing the designated exclusive bargaining agent and attempting to deal directly with its employees in mid-January 1980, by inducing employees to agree to accept changes in equipment lease rental provisions; and that the Respondent violated Section 8(a)(5) and (1) of the Act by on or about mid-January 1980 unilaterally reducing the trailer rentals of its employees.

The Respondent contends that the General Counsel has failed to establish that the Respondent unilaterally modified the trailer leases because the leases were modified following negotiations and agreement with the Union; that Local 800 waived its right to bargain with the Respondent by failing to request bargaining over the trailer lease changes; and that this matter should be deferred by the Board to the grievance-arbitration procedure contained in the parties' collective-bargaining agreement.

The General Counsel takes the position that the Respondent did not provide the designated exclusive bargaining agent an opportunity to bargain and agree to a modification of a contractual term affecting basic conditions of employment, i.e., trailer rental, during a fixed term of a contract. The General Counsel argues that the Respondent's individual negotiations with an International union agent and several local unions fail to constitute bargaining with the designated exclusive bargaining agent and that the agreement reached with these locals does not constitute an agreement by the designated bargaining agent to change the term of a multiunit/multiunion collective-bargaining agreement which covers a multiemployer/multiunion bargaining unit. The General Counsel contends that such modification can lawfully be effectuated by resort to the mechanisms set forth through the existing contractual procedures, e.g., those concerning new riders, lease approval, or relief in the NMFA and supplement, or elsewhere through joint bargaining.

The Respondent concededly sought no relief through the various contractual mechanisms. It does argue that McMasters was possessed of apparent authority to negotiate changes in the terms of the trailer leases.

With respect to the deferral issue the General Counsel argues that such course of action is not appropriate because the Respondent's conduct constituted a serious unfair labor practice which runs to the Respondent's basic bargaining obligations and which undermines the status and authority of Local 800 and the Teamsters National Freight Industry Negotiating Committee. Furthermore, the General Counsel argues that deferral is inappropriate because the violations alleged concern midterm modifications of clear and unambiguous provisions of the NMFA and supplement which require no contract interpretation, and also concerns direct dealing with employees constituting interference with basic statutory rights.

2. The deferral issue

The Respondent contends that this matter ought to be referred to the grievance-arbitration procedures set forth in the NMFA and supplement, pursuant to the Board's decision in *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971), upon the assumption that a dismissal of the complaint and retention of jurisdiction by the Board will unlock the present procedural deadlock. In *Roy Robinson, Inc., d/b/a Roy Robinson Chevrolet*, 228 NLRB 828 (1977), the Board referred to the arbitration process an issue involving an alleged violation of Section 8(a)(5) of the nature of a failure to bargain concerning a unilateral cessation of certain operations. The respondent therein asserted that the terms of the collective-bargaining agreement justified its conduct. The Board held that any doubts as to whether the issue was covered by the contractual arbitration clause should be resolved in favor of arbitration. Then Chairman Murphy in a concurring opinion stated that whether the respondent had a right under the contract to engage in unilateral action was "clearly one of contract interpretation which an arbitrator is peculiarly competent to resolve."

The Board, however, has also held that where the alleged violation involves an alleged breach of the provisions of a collective-bargaining agreement of which the language is clear and unambiguous and no construction of the collective-bargaining agreement is relevant for evaluating the reasons advanced by the Respondent for failure to comply with such provision, then deferral to arbitration is not appropriate. *Struthers Wells Corp.*, 245 1170 (1979). Similarly, deferral to arbitration is inappropriate where the respondent's alleged conduct consists of a refusal to abide by the terms of the collective-bargaining agreement rather than of having different interpretation of that agreement. *Precision Anodizing & Plating, Inc.*, 244 NLRB 846 (1979).[5]

The alleged midterm modification of the collective-bargaining agreement herein concerned a clear and unambiguous provision of the contract. There is no language in the contract that is susceptible to an interpretation that the Respondent had the authority to act unilaterally in changing the trailer rental. If the finding of an unfair labor practice herein were premised upon a finding that the Respondent chose the wrong contractual mechanism to obtain a modification, or if it were premised solely on the failure of the Respondent to resort to one of those mechanisms, an interpretation of the contract arguably would be relevant. However, the Respondent herein is alleged to have unilaterally changed the collective-bargaining agreement without recourse to

[5] See also *Sun Harbor Manor*, 228 NLRB 945 (1977).

the employees' designated exclusive bargaining agent either by contractual means or by extra contractual joint bargaining. The General Counsel's argument that the Respondent ought to have utilized certain contractual mechanisms is therefore not one that need be resolved. It is not necessary to a remedial order to specify the specific means the Respondent ought to utilize to obtain the agreement of the designated exclusive employee bargaining agent to the desired contract modification. It is only necessary to order that it do so in a lawful manner. Accordingly there is no relevance here to the application of contractual expertise of an arbitrator. Moreover, the alleged violations herein involve conduct which is indicative of a disregard for the contract, and the collective-bargaining process with respect to a basic employment condition. Cf. *Oak Cliff-Golman Baking Company*, 207 NLRB 1063 (1973).

Additionally, it is alleged that the Respondent's conduct, while simultaneously subverting the role of the employees' bargaining agent, also consisted of interference with employees' basic statutory rights. Cf. *Vesuvius Crucible Co.*, 252 NLRB 1279 (1980). The issue of direct dealing with employees is a serious issue, and it is entwined with the basic issues in this case. The disposition of the presently deadlocked grievances would not resolve a basic issue in this case; i.e., the alleged undermining of the employee's collective-bargaining agent by direct dealings with employees. A deferral to the grievance-arbitration procedure would result in a fragmentation of issues and accordingly would be inappropriate. *The Proctor & Gamble Manufacturing Company*, 248 NLRB 953 (1980). Accordingly, I conclude that it is not appropriate to defer this matter to the grievance arbitration process where it is now procedurally deadlocked.

3. Conclusions

The Respondent asserts and the General Counsel concedes that the collective-bargaining agreement herein imposes no explicit obligation of the Respondent to lease all of its equipment from the owner-operators. The General Counsel concedes that the Respondent may very well have the right to terminate unilaterally individual leases pursuant to the terms of those leases, on an *ad hoc* basis. The General Counsel argues that once the Respondent has engaged in the general practice of leasing equipment from its owner-operators it has established by practice a condition of employment and cannot unilaterally, without notice and bargaining with the Union as a matter of policy, no longer lease any vehicles; i.e., trucks or trailers from its drivers. However, the Respondent herein is not alleged in the complaint to have breached its bargaining obligations by unilaterally terminating all trailer leases. Rather, it is alleged to have unilaterally changed the trailer rental and thereby breached its bargaining obligation.

Section 8(a)(5) and (1) of the Act obliges an employer to notify and consult with the designated exclusive bargaining agent concerning changes in wages, hours, and conditions of employment. *N.L.R.B.* v. *Benne Katz, etc. d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736 (1962). Upon notice of such proposed change the employees' bargaining agent must act with due diligence in requesting bargaining, otherwise it may be deemed to have waived its right to bargaining. *The City Hospital of East Liverpool, Ohio*, 234 NLRB 58 (1978); *Citizens Bank of Willmar*, 245 NLRB 389 (1979). The union's obligation arises upon actual notice regardless of whether it was received from a source other than direct communication from the employer. *Hartmann Luggage Company*, 173 NLRB 1254 (1968). A union may elect to waive its right to notice and bargaining by contractual agreement, *Bancroft Whitney Co., Inc.*, 214 NLRB 57 (1974). A contractual waiver will not lightly be inferred but must be clearly demonstrated by the terms of the collective-bargaining agreement and, under certain circumstances, from the history of negotiations: *Southern Florida Hotel & Motel Association, et al.*, 245 NLRB 561 (1979); *Hilton Hotels Corporation d/b/a Statler Hilton Hotel*, 191 NLRB 283 (1971). Furthermore, contractual language which reserves to the employer the right to make unilateral changes with respect to certain areas, such as work rules, will be strictly construed and will not be interpreted to extend to other areas such as wages in the absence of specific evidence of such intent. *Southern Florida Hotel & Motel Association, supra.* (See also *Capitol Trucking, Inc.*, 246 NLRB 135 (1979)).

The amount of compensation paid to a driver by the carrier-employer for the use of the driver's equipment is a subject which affects the driver-employee's economic interest as vitally as the subject of the amount of his wages, and as such falls within the scope of obligatory collective bargaining. Cf. *Local 24, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO* v. *Oliver*, 358 U.S. 283 (1959). The amount of trailer rental was subject to negotiations between the parties and an agreement was reached as to a precise percentage of gross revenue. That agreement was memorialized in a written contract of which the terms are clear and unambiguous. It is of no matter that the Respondent may not, by the explicit terms of the contract, be obliged to enter into equipment leases with all or any of its drivers. Once having done so the Respondent is obliged by that contract as to the agreed-upon compensation. The objective for negotiating the amount of rental compensation, as observed by the Supreme Court in the *Oliver* case, is to protect the drivers from a risk of erosion of their wages by the fixing of an inadequate compensation for the costs of operating their own equipment. Having entered into an equipment lease, the Respondent is not free to change unilaterally the trailer rental without having changed a basic term and condition of employment as embodied in the collective-bargaining agreement. The Respondent's only recourse if it desires to change that term of the contract is to obtain an agreement from the recognized, designated collective-bargaining agent unless the contract itself empowers unilateral action. It is well-settled law that a modification of a clear and unambiguous term of contract of fixed duration, regardless of economic motivation or duration of modification, must be obtained pursuant to a positive affirmance by the employees' bargaining agent otherwise the requirements of Section 8(d) of the Act are not met and a violation of Section 8(a)(5) results. *C & S Indus-*

tries, Inc., 158 NLRB 454, 456–457 (1966); *Oak Cliff-Golman Baking Company*, 207 NLRB 1063 (1973); *Sun Harbor Manor, supra; Fairfield Nursing Home*, 228 NLRB 1208 (1977); *Airport Limousine Service, Inc., etc.* 231 NLRB 932 (1977); *Keystone Steel & Wire, Division of Keystone Consolidated Industries, Inc.*, 237 NLRB 763 (1978); *Precision Anodizing & Plating, Inc.*, 244 NLRB 846 (1979); *Struthers Wells Corp.*, 245 NLRB 1170 (1979).

The trailer rental provision of the contract is without ambiguity and compliance therewith is forcefully stressed in the collective-bargaining agreement. The only ambiguity arguable herein is the means by which the Respondent could effectuate such a change under the various mechanisms delineated in the contract, if indeed any of those provisions were applicable; i.e., via a rider, a request for relief, or joint committee approval of a lease. Assuming that as the Respondent suggests no such mechanism in the contract was applicable, either by contractual interpretation or past practice, there is no basis to argue that the contract by implication authorized unilateral action with respect to a modification of its terms. I find no language in the contract that suggests that the Respondent may act unilaterally with respect to the modification of the amount of trailer rental compensation. No effort was made to adduce evidence demonstrating such intent by way of historical negotiations, nor indeed did the Respondent cite any contractual language which might give rise to an argument of contractual ambiguity with regard to the means of adjusting trailer rental. It does not follow that a contractual right to terminate an individual lease or even all leases gives rise to a right unilaterally to set new rental provisions at variance from the rates in the NMFA and supplement.

The Respondent contends that International Union Agent McMasters possessed apparent authority to negotiate and agree to contractual modifications concerning the trailer rental. There is very little precise information in this record as to McMasters' actual duties as an International agent. He did engage in negotiations with respect to the Central Conference Area Iron & Steel Rider. He was not involved in recent past negotiations on behalf of the International union. He was not involved in negotiations for the Eastern Conference Area Iron & Steel Rider. There is no evidence that he has at any time in the past negotiated as an agent on behalf of the designated bargaining agent with respect to new riders or any other form of contract modification.

An employer is obliged to bargain solely with the employees' designated bargaining agent and may deal with no other. *Medo Photo Supply Corporation* v. *N.L.R.B.*, 321 U.S. 678 (1944). In a situation involving designated or Board-certified local unions where combined national-local agreements evolved from multiunit bargaining, the Board has held that an employer does not breach its bargaining obligations by dealing with the parent International union rather than the local union concerning multiunit matters. *Radio Corporation of America*, 135 NLRB 980 (1962). The Board there stated (at 983):

> Surely the Board is not such a prisoner of a narrow interpretation of its own findings concerning appropriateness of a separate bargaining unit that it cannot recognize a workable pattern of bargaining developed by the parties which, while giving due recognition to such separate units, also seeks to accommodate the interests of local and national bargaining.

The Board has found conduct violative of Section 8(a)(5) of the Act wherein an employer attempted to deal individually with local unions on matters which are within the province of national negotiations. *General Electric Company*, 150 NLRB 192, 193 (1964), enfd. 418 F.2d 736, 755 (2d Cir. 1969), cert. denied 397 U.S. 965. However, where the International union acquiesced in local bargaining, the Board has held that an employer's dealings with a local union is not violative of the Act. *Braeburn Alloy Steel Division, Continental Copper & Steel Industries, Inc.*, 202 NLRB 1127 (1973); *American Laundry Machinery Company*, 107 NLRB 1574, 1577 (1954). Accordingly, the Board looks to the realities of the bargaining relationship between the parties, as well as to the identity of the designated collective-bargaining agent. However, when an employer bargains with a union representative who has no real or apparent authority it breaches its obligation to deal exclusively with the employees' bargaining agent. *Spriggs Distributing Company*, 219 NLRB 1046 (1975).

In the instant case the designated bargaining agent is not the individual local union; nor is it the International Union. The collective-bargaining agreement is not a local agreement. The units are not local units. The designated bargaining agent consists of all locals affiliated with the International Union. In practice these local unions have authorized a national committee as its agent to negotiate a national freight agreement. That national committee established subcommittees which in turn negotiated the NMFA and supplements. A multiemployer/multiunion bargaining unit has been established. Under such an integrated, national scheme of relationships there is no basis to conclude that McMasters and representatives of several local unions in the central conference of Teamsters were possessed of real or apparent authority to negotiate modifications either to the NMFA or to the Eastern Conference Area Iron & Steel Rider. The ability of a few individual local unions to negotiate modifications to a national contract runs contrary to the nature of the multiemployer/multiunion bargaining practice and would obstruct the ultimate goal of such joint bargaining; i.e., industrywide labor relations stability.

There is also no basis upon which to conclude that the designated bargaining agent acquiesced in the individual negotiations. The few locals which participated in the meetings with McMasters do not constitute a majority of the locals which comprise the designated bargaining agent. The Respondent was advised early of Local 800's opposition to the cancellation of trailer leases. Local 800 was not advised of the substance of the McMasters' negotiations until an agreement was reached and after the Respondent decided to implement a revised trailer rental. Neither Local 800, nor it appears any other affiliated Local, except those few central conference locals, had an opportunity to negotiate concerning the revision of the trailer rental, albeit Local 800 may have had the oppor-

tunity to discuss the decision to terminate all trailer leases. A failure to negotiate concerning the terminations of leases does not constitute an agreement to changes in the rental rates, nor does it constitute a waiver of the right to be consulted and to agree to any changes in those rates. Indeed, the designated bargaining agent need not have agreed to nor even need to have bargained about a midterm contract modification. *Keystone Steel & Wire, supra*. Accordingly, the designated bargaining agent did not have the opportunity to negotiate with respect to nor did it agree to the midterm modification of the collective-bargaining agreement; i.e., the reduction in trailer rental compensation.

I conclude that, by dealing with McMasters and representatives of several individual local unions in the Central Conference of Teamsters, the Respondent breached its obligation to deal exclusively with and obtain agreement from the unit employees' designated bargaining agent in joint bargaining concerning a midterm modification of a term and condition of the collective-bargaining agreement, and by implementing said modification it thereby failed to comply with the requirements of Section 8(d) of the Act thereby violating Section 8(a)(5) of the Act.

With respect to allegation that the Respondent dealt directly with its employees, I conclude that said allegation is meritorious. An employer is obliged to deal with the employees' collective agent and may not insinuate employees into its attempt to obtain contract modification in such a way as to erode the bargaining position of that agent. *Goodyear Aerospace Corporation*, 204 NLRB 831 (1973), enfd. in pertinent part 497 F.2d 747 (6th Cir. 1974). See also *Medo Photo Supply Corporation* v. *N.L.R.B., supra*, and *General Electric Company, supra*.

The Respondent, by its direct communications with employees, bypassed their designated bargaining agent and induced employees to enter into new equipment leases which contained provisions different from the equipment lease provisions set forth in the NMFA and supplement by offering them the alternative of a complete cancellation of the trailer lease portion of their equipment leases.

With respect to the final allegation in the complaint that employees were terminated or refused assignment to work in consequence of the Respondent's unilateral conduct, there is no evidence to support such allegation.

CONCLUSIONS OF LAW

1. The Respondent, Branch Motor Express Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 800 is a labor organization within the meaning of Section 2(5) of the Act, and together with other local unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, they have been designated and are the exclusive collective-bargaining representative of the employees in a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act consisting of all employees covered in the multiemployer bargaining unit set forth in articles 2 and 3 of the National Master Freight Agreement employed by members of employer bargaining associations, a party thereto, or employers bound thereby, including the Respondent, Branch Motor Express Company.

3. The Respondent bypassed the designated exclusve bargaining agent, described above, by dealing directly with its employees who are members of the multiemployer unit, also described above, in mid-January 1980 by inducing employees to agree to its changes with respect to equipment lease provisions different from the equipment lease provisions set forth in the National Master Freight Agreement and supplement and has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. Commencing on or about January 20, 1980, the Respondent, without consultation, meaningful bargaining, and agreement with the designated exclusive bargaining agent and by failing to comply with its obligations under Section 8(d) of the Act, unilaterally implemented changed terms and conditions of employment with respect to equipment leases as set forth in the National Master Freight Agreement and supplement and required its employees who are members of the unit described above to execute new leases incorporating such changed terms and conditions of employment and has thus engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

5. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

In view of the foregoing findings of unfair labor practices I recommend that the Respondent be ordered to cease and desist from said unfair labor practices and to post an appropriate notice, and to take certain affirmative action. I conclude that a *status quo ante* remedy is appropriate and necessary in this case and I recommend that the Respondent be ordered to reinstate the owner-operator equipment leases that it had terminated on March 31, 1980, which contain the minimum equipment rental provisions as set forth in the National Master Freight Agreement and supplement and to make whole its owner-operators who suffered a loss of earnings as a result of the Respondent's unilateral action and to make such employees whole for any loss of earnings suffered as a result of Respondent's unilateral action. Said backpay will be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[6]

In view of the absence of evidence that the Respondent has demonstrated a proclivity to engage in conduct violative of the Act, a broad remedial remedy as requested by the General Counsel is not warranted.

[Recommended Order omitted from publication.]

[6] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).